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AUTHOR Drake, Sarah E.; Vontz, Thomas S.

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ABSTRACT

This digest highlights the Constitutional and statutory foundations of the United States Supreme Court, discusses the changing role of the Supreme Court, and recommends online resources helpful in teaching and learning about the United States Supreme Court. The digest addresses general concerns of delegates at the Constitutional Convention, Federalist 51, Federalist 78, the Judiciary Act of 1789 (establishing and organizing the federal judiciary), judicial review, Marbury v. Madison (1803), and what enables the Supreme Court to secure justice. (BB)

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Teaching About the United States Supreme Court

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The Supreme Court is one of the most important institutions in the United States. Thus, social studies teachers should emphasize the significance of the Court in our nation's history. This ERIC Digest highlights the origin and foundations of the Supreme Court, discusses the changing role of the Supreme Court in the United States, and recommends World Wide Web resources helpful in teaching and learning about the Supreme Court.

Constitutional and Statutory Foundations of the Supreme Court. The majority of the men who met in Philadelphia during the summer of 1787 agreed on the need to create a more powerful central government. Concurrently, however, many of the delegates feared the abusive power a new national government could wield. During the ratification struggle, James Madison, in *Federalist 51*, emphasized the necessity of providing for "auxiliary precautions" to limit governmental power. The judicial branch was designed in part to exercise such precautions on the legislative and executive branches. At the same time, the framers placed checks on the judiciary in order to ensure that no single branch would dominate the others.

The judiciary was the least discussed branch of government at the Constitutional Convention, and Alexander Hamilton in *Federalist 78* later referred to the Supreme Court as the "least dangerous" branch of the proposed national government because it possessed neither the power of "the purse" (legislative power) nor that of "the sword" (executive power). The debates surrounding the Court's creation reveal a broad consensus that the federal judiciary shall have jurisdiction in all cases pertaining to the Constitution, federal statutes, and treaties. The delegates provided for the Supreme Court to have original jurisdiction only in cases involving "Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party." In all other cases under its authority, the Court was granted "appellate jurisdiction" (Article III, Section 2, Clause 2 of the Constitution). In addition, the convention delegates agreed that Congress would be empowered to establish inferior courts (Casto 1995, 14).

The Philadelphia delegates granted the President power to make judicial appointments and required the Senate's approval for such appointments. Supreme Court justices were to be appointed for lifetime tenure "during good behavior" to create an independent judiciary that would act to preserve a limited government and the rule of law.

After ratification of the Constitution and subsequent implementation of the new government, Congress passed the Judiciary Act of 1789 to establish and organize the federal judiciary. This federal statute established two lower levels of federal courts: 13 federal district courts at the lowest level and three circuit courts at the next level to hear appeals from the district courts. The Supreme Court was affirmed as the highest court of appeals in the federal system. The Judiciary Act of 1789 also provided in its Section 25 that the federal judiciary would have the power of judicial review over actions of state governments. Thus, acts of state governments could be nullified if they violated the United States Constitution or federal laws and treaties that conformed to it.

The Changing Role of the Supreme Court in the United States. The U. S. Supreme Court met for its first session in February 1790. During the first decade of the Court's existence, the justices had a light caseload (Casto 1995, 54-55). Under John Marshall, who became Chief Justice in 1801, the Court enhanced its authority and increased the power of the federal government at the expense of the states. The most famous case during Marshall's tenure as Chief Justice, *Marbury v. Madison* (1803), provided an opportunity for the Court to exercise judicial review about actions or laws of the federal government. Judicial review, or the power of the federal courts to determine whether acts of state governments or the national government are constitutional, was first directed at the state level in *Ware v. Hylton* (1796); the Supreme Court declared a Virginia statute void because it violated the 1783 treaty with Great Britain. In 1803, the Marshall Court for the first time declared a federal law unconstitutional.

The scenario for *Marbury v. Madison* (1803) began during the final days of President John Adams's administration, when he made several "midnight appointments" to the federal judiciary to ensure that the Federalist party agenda would not be totally overturned by the newly elected President, Thomas Jefferson, and his Democratic-Republican party, which held a majority of seats in the Congress. Adams appointed William Marbury, among others, to serve as a justice of the peace in Washington, DC. Some of Adams's last-minute judicial appointments, including that of Marbury, were never delivered. When Thomas Jefferson assumed the presidency in March 1801, he ordered his Secretary of State, James Madison, to ignore the commissions. Marbury subsequently took his case directly to the Supreme Court and asked it to issue a writ of mandamus to Madison. The writ of mandamus would order the Secretary of State to carry out his duties by delivering Marbury's commission to him. Section 13 of the Judiciary Act of 1789 gave the Court power to issue a writ of mandamus in cases under its original jurisdiction.

Chief Justice John Marshall considered three questions in this case. Did Marbury have a right to the commission? Did the law provide him a means to obtain the commission? Could the Supreme Court, through its original jurisdiction in Marbury's case, issue a writ of mandamus?

Sarah E. Drake **is a doctoral student in the School of Education and a project assistant at the Social Studies Development Center of Indiana University.** ***Thomas S. Vontz*** **is an assistant professor of education at Rockhurst University in Kansas City, MO.**

The Court ruled that Marbury was due his commission. The Chief Justice stated that a writ of mandamus, which the Supreme Court was authorized to issue by Section 13 of the Judiciary Act of 1789, was the proper legal procedure to follow in this case. Marshall pointed out, however, that according to Article III, Section 2, Clause 2 of the Constitution, the Court could not have original jurisdiction in the *Marbury* case. So the Chief Justice concluded that Section 13 of the Judiciary Act violated the Constitution and therefore was unconstitutional.

Marbury did not receive his commission because the federal statute by which he brought his case to the Supreme Court was nullified. Thus, a precedent was established whereby the Court would have the power of judicial review over acts of the legislative and executive branches of the federal government.

After the *Marbury v. Madison* decision, the Supreme Court did not declare another act of Congress void until 1857, when in *Scott v. Sandford* it decided the Missouri Compromise of 1820 to be unconstitutional. During the twentieth century, however, the Court extensively and emphatically used its power of judicial review through interpretation of the Constitution's 14th Amendment in concert with particular parts of the Bill of Rights (Amendments 1-10) to protect rights of individuals against tyranny by the federal and state governments.

In 1835, Alexis de Tocqueville observed in his classic commentary *Democracy in America* that the Supreme Court's power to declare particular actions of legislative or executive officials unconstitutional was a powerful "barrier against the tyranny of political assemblies." And so it has been from his time to our own era. However, the Court's power to secure justice would be meaningless without public understanding and support of its constitutional responsibilities and purposes. The Court's "power is enormous," said Tocqueville, "but it is the power of public opinion. [The justices] would be impotent against popular neglect or contempt of the law."

To maintain the important balance of power among the three branches of government and enable the Supreme Court to play its proper role in a constitutional government, responsible citizens must be vigilant about the enforcement of laws that protect their rights. Citizens must be cognizant of what their rights are, how the Court has acted to protect them, and why they must be engaged politically and civically to support the Constitution and its just enforcement.

World Wide Web Resources for Teaching About the Supreme Court. The following Web sites are recommended to teachers and students. Those sites are sources of information about landmark decisions of the U. S. Supreme Court, which should be emphasized in the school curriculum.

Cornell Legal Information Institute: Cornell's site contains all of the U. S. Supreme Court opinions since May 1990 and 600 opinions on major cases throughout the Court's history. <http://supct.law.cornell.edu/supct>

Federal Judicial Center: This site provides general information about the federal judiciary including the history of federal courts and a biographical database of federal judges since 1789. <http://www.fjc.gov>

History of the Federal Judiciary: This site presents information about the history of the federal courts, the judges who have served since 1789, and landmark judicial legislation from the Judiciary Act of 1789 to the present. <http://air.fjc.gov/history/index_frm.html>

Oyez, Oyez, Oyez: This Supreme Court database from Northwestern University provides access to U. S. Supreme Court cases with texts of opinions and recordings of oral arguments in recent cases. It also contains biographical data on all Supreme Court justices and links to their opinions. <http://oyez.nwu.edu>

Supreme Court of the United States: This official site of the Court includes information about the history, structure, functions, and rules of the federal judiciary, opinions on all cases that have gone before the Court, oral arguments, the Court's docket, and a guide to visiting the U.S. Supreme Court building. <http://www.supremecourtus.gov/index.html>

References and ERIC Resources. The following list of resources includes references used to prepare this Digest. The items followed by an ED number are available in microfiche and/or paper copies from the ERIC Document Reproduction Service (EDRS). For information about prices, contact EDRS, 7420 Fullerton Road, Suite 110, Springfield, Virginia 22153-2852; telephone numbers are (703) 440-1400 and (800) 443-3742. Entries followed by an EJ number, annotated monthly in CURRENT INDEX TO JOURNAL IN EDUCATION (CIJE), are not available through EDRS. However, they can be located in the journal section of most larger libraries by using the bibliographic information provided, requested through Interlibrary Loan, or ordered from commercial reprint services.

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